

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA

Plaintiff,  
vs.

WILKENS FURMENT,  
Defendant.

3:05-cr-097-JWS-JDR

**ORDER DENYING  
REQUEST  
FOR EVIDENTIARY HEARING  
and  
SETTING BRIEFING SCHEDULE**

Defendant **Wilkins Furment** has pending an amended petition to vacate brought under 28 U.S.C. § 2255. Docket No. 79. The Amended Petition claims that Furment's trial counsel rendered ineffective assistance of counsel by failing to advise him of the terms and conditions of the plea agreement. He also claims that his counsel failed to file an appeal to the U.S. Court of Appeals for the Ninth Circuit, although requested to do so. See also Docket No. 95, p.1. The amended petition is signed by Mr. Furment's present counsel, Hugh Fleischer, and

is neither signed by Mr. Furment nor supported by an averment under oath by Mr. Furment.

The court entered an order to show cause directed to Mr. Furment as to why an evidentiary hearing is warranted on his § 2255 motion. Docket No. 87. Mr. Furment responded with a request for an evidentiary hearing. Docket No. 95. The government filed another opposition, Docket No. 97.

To warrant an evidentiary hearing on a § 2255 motion the defendant is required to allege specific facts which, if true, would entitle him to relief. Notwithstanding the repeated opportunity to support his request for an evidentiary hearing with an affidavit averring to the assertions represented in his supporting memorandum, no affidavit has been submitted. The record contains a statement by Mr. Furment at the change of plea hearing before the trial judge that his attorney had discussed the plea agreement with him and that he had read it. It also contains Mr. Furment's statement that he was waiving his right to appeal. In the absence of specific factual averments to the contrary, the magistrate judge concludes that the defendant is not entitled to an evidentiary hearing on his § 2255 motion. Accordingly, the Amended Petition shall be considered along with the present record without further evidence being adduced on the record to address the issues presented in the amended petition.

IT IS FURTHER ORDERED that: Defendant's brief on the merits shall be due June 16, 2008; Govt's response shall be due July 16, 2008; Reply, if any, shall be due August 1, 2008.

DATED this 12<sup>th</sup> day of May, 2008, at Anchorage, Alaska.

/s/ John D. Roberts

JOHN D. ROBERTS

United States Magistrate Judge